

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DUMONT BUSH,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

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CIVIL NO. 1:14-CV-1057

(Judge Rambo)

(Magistrate Judge Carlson)

MEMORANDUM

Before the court is a November 12, 2014 report and recommendation of the magistrate judge (Doc. 19) to whom this matter was referred in which he recommends that Defendant's motion to dismiss be granted without prejudice to Plaintiff being granted leave to file a new Federal Tort Claims Act ("FTCA") claim. Bush previously filed an FTCA action in April of 2013. That action was filed prematurely because Bush had not exhausted his administrative remedies before filing the lawsuit. His administrative tort claim was denied on October 29, 2013, several months after Bush filed the first FTCA action. The first FTCA action was dismissed without prejudice to file a new complaint. However, the new complaint, which is the instant case, is a constitutional tort claim which cannot be brought against the United States. The motion to dismiss the tort action is appropriate and will therefore be granted.

On November 21, 2014, Plaintiff filed a document entitled "Motion to Reinstate FTCA Claim" (Doc. 20). On December 2, 2014, Defendant filed a "Notice to the Court" (Doc. 21) in which it states its view that Plaintiff's document 20 is in the nature of an objection to the report and recommendation and the Government does not oppose it as such. Defendant does not object to allowing Plaintiff to file a new FTCA pleading, provided the complaint complies with Federal Rule of Civil Procedure 8(a).

The court will adopt the report and recommendation with an amendment as proposed by the Defendant. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: December 3, 2014.